

March 23, 2018

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, AND OTHER
INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
REGULATION SECTIONS 1859.190, 1859.193, 1859.194, 1859.195
AND 1859.198, TITLE 2, CALIFORNIA CODE OF REGULATIONS,
RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

REGULATION SECTIONS PROPOSED FOR AMENDMENTS:

- 1859.190, 1859.193, 1859.194, 1859.195 and 1859.198

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections, including an associated form, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Sections 17070.35, 17078.72(k) and 17078.72(l) of the Education Code. The proposals interpret and make specific reference Sections 17076.10, 17078.72, 101012(a)(4) and 101122(a)(4).

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

At its August 23, 2017 meeting, the SAB adopted emergency regulations to re-establish the Career Technical Education Facilities Program (CTEFP) under the SFP. The Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51) provided the CTEFP \$500 million in bond authority. In order for the SAB to apportion the CTEFP funding, the Program's regulations must be reinstated.

The SAB was presented for its consideration additional funding cycles by which school districts and local educational agencies would submit grant applications. OPSC collaborated with the California Department of Education (CDE) in order to present the schedules for a fourth and fifth funding cycle. The SAB approved the fourth funding cycle with specific timelines as follows:

- Opening date of round was September 27, 2017 through November 29, 2017, for which school districts and local educational agencies would submit CDE grant applications.
- CDE scored the grant applications and published the results by February 14, 2018.
- School districts and local educational agencies submitted the *Career Technical Education Facility Funding* (Form SAB 50-10) to OPSC by close of business February 21, 2018.
- Presentation to the SAB by June 2018 for funding consideration.

As a side note, it was brought to OPSC's attention that a subsection reference in existing Regulation Section 1859.193 needed to be corrected. OPSC is including this minor non-substantive change in its 45-day public notice.

Bond Funds Impacted

- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)
- Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51)

Attached to this Notice is the specific regulatory language of the proposed regulatory action. The proposed regulations can be reviewed on OPSC's website at www.dgs.ca.gov/opsc. Copies of the proposed regulations will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice. The proposed regulations amend the SFP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

Background and Problem Being Resolved

In 2006, the CTEFP was established under the SFP and \$500 million in bond authority was available for projects through Proposition 1D. The SAB established funding cycles with specific amounts of funding allocated to each funding cycle. The SAB also established in regulation (SFP Regulation Section 1859.196) how funds would be distributed to ensure the funds were distributed equally.

The proposed regulations resolve the problem of the CTEFP being an inactive program by re-establishing the CTEFP based on the successful passage of Proposition 51 and the repeal of SB 869, which removed the SAB's authority to make apportionments under the CTEFP on or after January 1, 2015 and also formalized how funds returning to the CTEFP were to be allocated. There is \$500 million in bond authority available for the SAB to allocate to school districts and local educational agencies for CTEFP projects.

OPSC performed a search on whether the proposed emergency regulations were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that the proposed emergency regulations are consistent and compatible with existing State laws and regulations. Proceeding with the re-establishment of the CTEFP will benefit school districts, local educational agencies and the State of California by providing facilities needed for students to learn the skills and knowledge critical for today's high demand technical careers and in

increasing the State's infrastructure investment resulting in a positive impact to the State's economy as well as supporting job creation.

Anticipated Benefits of the Proposed Regulations

The proposed regulations promote the State's general welfare by re-establishing the CTEFP based on the successful passage of Proposition 51 and the repeal of SB 869, which removed the SAB's authority to make apportionments under the CTEFP on or after January 1, 2015 and also formalized how funds returning to the CTEFP were to be allocated. There is \$500 million in bond authority available for the SAB to allocate to school districts and local educational agencies for CTEFP projects. The CTEFP has been a highly successful program, with each funding round to date being over-subscribed. Proceeding with the re-establishment of the CTEFP will benefit school districts, local educational agencies and the State of California by providing facilities needed for students to learn the skills and knowledge critical for today's high demand technical careers and in increasing the State's infrastructure investment resulting in a positive impact to the State's economy as well as supporting job creation.

The proposed regulations are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulations carries out the will of the voters based on the successful passage of Proposition 51 in November 2016. The CTEFP will have a positive impact to the State's economy and has the potential of creating jobs.

Summary of the Proposed Regulatory Amendments

A summary of the proposed regulations is as follows:

Existing Regulation Section 1859.190 sets forth general filing submittal instructions and specifies that CTEFP modernization projects do not affect the Modernization Eligibility off that facility pursuant to Regulation Section 1859.60. The proposed emergency regulatory amendments deletes language that has been repealed by AB 99, Chapter 15, Statutes of 2017, and deletes the language related to the treatment of funds returning to the CTEFP.

Existing Regulation Section 1859.193 specifies that CTEFP projects may be allowed to construct a new facility or modernize or Reconfigure an existing facility. Grant determinations shall not exceed \$3 million for new construction projects or \$1.5 million for modernization/reconfiguration projects. It was brought to OPSC's attention that a subsection reference was incorrect. The proposed amendment corrects the reference and is considered a non-substantive change.

Existing Regulation Section 1859.194 specifies that CTEFP apportionments shall require an applicant matching share contribution on a dollar-for-dollar basis, and that loans may be requested by districts needing assistance to reach their matching share requirement, if specified criteria are met. Terms of loan agreements are set forth, including the requirement to repay the loan to the State with interest on the unpaid balance at the same rate as that charged by the Pooled Money Investment Board. The proposed emergency regulatory amendments provide new language clarifying that funds generated from other state or federal grant programs, such as the Career Technical Education Incentive Grant Program cannot be used as the local matching share.

Existing Regulation Section 1859.195 prescribes the dollar amounts set forth for the first six-month and second six-month funding cycles, plus any funds remaining from the first cycle. The emergency regulatory amendments delete language that has been repealed by AB 99, Chapter 15, Statutes of 2017.

Existing Regulation Section 1859.198 specifies that applicants are subject to the time limit on apportionments as outlined in Education Code Section 17076.10 and substantial progress requirements pursuant to Regulation Section 1859.105. The emergency regulatory amendments provide new language to allow funding being returned to the CTEFP as a result of a project being rescinded or reduced to costs incurred to be made available for Apportionment in subsequent funding cycles. It also deletes language that is no longer applicable because that statute has been repealed.

Statutory Authority and Implementation

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

Determination of Inconsistency or Incompatibility with Existing State Regulations

The proposed regulations resolve the problem of the CTEFP being an inactive program by re-establishing the CTEFP based on the successful passage of Proposition 51 and the repeal of SB 869, which removed the SAB's authority to make apportionments under the CTEFP on or after January 1, 2015 and also formalized how funds returning to the CTEFP were to be allocated. There is \$500 million in bond authority available for the SAB to allocate to school districts and local educational agencies for CTEFP projects. This carries out the will of the voters based on the successful passage of Proposition 51 in November 2016. The CTEFP will have a positive impact to the State's economy and has the potential of creating jobs.

After conducting a review, the SAB has concluded that these are the only regulations on this subject area, and therefore, the proposed regulations are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulations are within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to any local agency or school district requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulations create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact to Businesses and Jobs in California

The proposed regulations resolve the problem of the CTEFP being an inactive program by re-establishing the CTEFP based on the successful passage of Proposition 51 and the repeal of SB 869, which removed the SAB's authority to make apportionments under the CTEFP on or after January 1, 2015 and also formalized how funds returning to the CTEFP were to be allocated. There is \$500 million in bond authority available for the SAB to allocate to school districts and local educational agencies for CTEFP projects. Proceeding with the re-establishment of the CTEFP will benefit school districts, local educational agencies and the State of California by providing facilities needed for students to learn the skills and knowledge critical for today's high demand technical careers. The CTEFP will increase the State's infrastructure investment resulting in a positive impact to the State's economy as well as supporting job creation. Re-establishment of the CTEFP carries out the will of the voters based on the successful passage of Proposition 51 in November 2016.

Therefore, the proposed regulations will most likely have a positive effect on the State's economy, creation of jobs, creation of new businesses, expansion of businesses, and will not eliminate jobs or eliminate existing businesses within California.

Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment

- The proposed regulations promote the State's general welfare by re-establishing the CTEFP based on the successful passage of Proposition 51 and the repeal of SB 869, which removed the SAB's authority to make apportionments under the CTEFP on or after January 1, 2015 and also formalized how funds returning to the CTEFP were to be allocated. There is \$500 million in bond authority available for the SAB to allocate to school districts and local educational agencies for CTEFP projects.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work on school construction projects and although this proposed regulation does not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship and training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.

- There is no impact to the State's environment from the proposed regulations.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulations will not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. Although the proposed regulations only apply to school districts and local educational agencies for purposes of funding school facility projects, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of small businesses in these areas.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at OPSC no later than May 7, 2018 at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, 6th Floor
West Sacramento, CA 95605

E-mail Address: lisa.jones@dgs.ca.gov

Fax No.: (916) 375-6721

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Ms. Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability

of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received they will be added to the rulemaking file. The file is available for public inspection at OPSC during normal working hours. Items 1 through 3 are also available on OPSC's Internet Web site at: <http://www.dgs.ca.gov/opsc> under "Resources," click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the website listed above.